

Jonathan O. Peña, Esq.  
CA Bar ID No.: 278044  
Peña & Bromberg, PLC  
3467 W. Shaw Ave., Ste 100  
Fresno, CA 93711  
Telephone: 559-439-9700  
Facsimile: 559-439-9723  
Email: info@jonathanpena.com  
Attorney for Plaintiff, Douglas Lee Barkow

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION**

DOUGLAS LEE BARKOW,

Plaintiff,

v.

MARTIN O'MALLEY<sup>1</sup>,  
Commissioner of Social Security,

Defendant.

Case No. 2:24-cv-00820-CKD

**STIPULATION FOR THE AWARD  
AND PAYMENT OF ATTORNEY  
FEES AND EXPENSES PURSUANT  
TO THE EQUAL ACCESS TO  
JUSTICE ACT; ORDER**

IT IS HEREBY STIPULATED by and between the parties through their undersigned counsel, subject to the approval of the Court, that Plaintiff be awarded attorney fees and expenses in the amount of SEVEN THOUSAND FIVE HUNDRED 0/100 (\$7,500.00) under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), and costs in the amount of ZERO dollars (\$0.00) under 28 U.S.C. §1920. This amount

---

<sup>1</sup> Martin O'Malley became the Commissioner of Social Security on December 20, 2023. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Martin O'Malley should be substituted for Kilolo Kijakazi as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

1 represents compensation for all legal services rendered on behalf of Plaintiff by counsel  
2 in connection with this civil action, in accordance with 28 U.S.C. §§ 1920, 2412(d).

3 Plaintiff was the prevailing party in this matter and Plaintiff is an individual  
4 whose net worth does not exceed \$2,000,000 at the time the civil action was filed. The  
5 position of the Commissioner was not substantially justified and an award of fees is not  
6 unjust.

7 After the Court issues an order for EAJA fees to Plaintiff, the government will  
8 consider the matter of Plaintiff's assignment of EAJA fees to Plaintiff's attorney.  
9 Under *Astrue v. Ratliff*, 130 S. Ct. 2521, 2528-29 (2010), EAJA fees awarded by this  
10 Court belong to the Plaintiff and are subject to offset under the Treasury Offset Program  
11 (31 U.S.C. § 3716(c)(3)(B) (2006)). Any EAJA fees should therefore be awarded to  
12 Plaintiff and not to Plaintiff's attorney. If, after receiving the Court's EAJA fee order,  
13 the Commissioner (1) determines that Plaintiff has assigned his right to EAJA fees to  
14 his attorney; (2) determines that Plaintiff does not owe a debt that is subject to offset  
15 under the Treasury Offset Program, and (3) agrees to waive the requirements of the  
16 Anti-Assignment Act, then the EAJA fees will be made payable to Plaintiff's attorney.  
17 However, if there is a debt owed under the Treasury Offset Program, the Commissioner  
18 cannot agree to waive the requirements of the Anti-Assignment Act, and the remaining  
19 EAJA fees after offset will be paid by a check or electronic fund transfer (EFT) made  
20 out to Plaintiff, but delivered to Plaintiff's attorney.

21 This stipulation constitutes a compromise settlement of Plaintiff's request for  
22 EAJA attorney fees, and does not constitute an admission of liability on the part of  
23 Defendant under the EAJA or otherwise. Payment of the agreed amount shall constitute  
24 a complete release from, and bar to, any and all claims that Plaintiff and/or Counsel  
25 including Counsel's firm may have relating to EAJA attorney fees in connection with  
26 this action.  
27  
28

1 The parties further agree that the EAJA award is without prejudice to the right of  
2 Plaintiff's attorney to seek attorney fees pursuant to Social Security Act § 206(b), 42  
3 U.S.C. § 406(b), subject to the offset provisions of the EAJA. *See* 28 U.S.C. §  
4 2412(c)(1) (2006).

5 Respectfully submitted,

6  
7 Dated: November 6, 2024

8 /s/ Jonathan O. Peña  
9 JONATHAN O. PEÑA  
Attorney for Plaintiff

10 Dated: November 6, 2024

11 PHILLIP A. TALBERT  
12 United States Attorney  
13 MATHEW W. PILE  
14 Associate General Counsel  
Office of Program Litigation  
Social Security Administration

15 By: \* Erin Jurrens  
16 Erin Jurrens  
17 Special Assistant U.S. Attorney  
18 Attorneys for Defendant  
19 (\*Permission to use electronic signature  
20 obtained via email on November 6, 2024).  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER**

The parties' Stipulation for the Award and Payment of Equal Access to Justice Act Fees and Expenses (ECF No. 18) is GRANTED.

**IT IS ORDERED** that fees and expenses in the amount of SEVEN THOUSAND FIVE HUNDRED 0/100 (\$7,500.00) as authorized by the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), be awarded subject to the terms of the Stipulation.  
SO ORDERED.

Dated: Nov. 8, 2024



---

CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE